THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15031 OF 2007

ORAL ORDER:

This writ petition is filed seeking a declaration that the order passed by the 1st respondent dated 25.4.2007, thereby confirming the order of the 2nd respondent in M.A.No.958 of 2006 dated 9.5.2006 as arbitrary and illegal.

The petitioner claims to be in possession of Ac.2.35 cents of dry land situated in R.S.No.9/C of Ryali village belonging to the 3rd respondent-Temple. It is stated that the petitioner's grandfather by name V. Subbaiah was initially granted lease by the 3rd respondent-Temple and, on his death, on 24.5.2003, the petitioner has been continuing in possession and enjoyment of the same. It is also stated that the petitioner made an application requesting the 3rd respondent-Temple to continue him as tenant, which was orally agreed to by the 3rd respondent-Temple. Pursuant thereto, the petitioner has been paying the maktha regularly and cultivating the land in question. However, when the petitioner made a petition before the 2nd respondent seeking a declaration that he is a land less poor person, and, thus, entitled to the benefit of Section 82(2) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short "the Act"), the 2nd respondent by order dated 9.5.2006 rejected his claim. Aggrieved by the said order, the petitioner preferred an Appeal before the 1st respondent, which was also dismissed. Hence, this writ petition.

I have heard the learned counsel for the petitioner and perused the material on record.

Admittedly, the petitioner was never granted any lease by the 3rd respondent-Temple, but his grandfather was the

cultivating tenant, who expired on 29.5.2003. Thus, there is no valid lease in favour of the petitioner at any point of time. The 1st respondent in his order dated 25.4.2007 recorded a finding that as a matter of fact, the lease in favour of petitioner's grandfather also expired long back and, subsequently, he continued in possession of the land in question unauthorisedly without there being any lease in his favour from 1980 till his death in the year 2003. Nothing has been placed before this Court to show that the said finding of fact recorded by the 1st respondent is incorrect. In the circumstances, I do not find any justifiable ground to interfere with the conclusion of the respondents 1 and 2 that the petitioner shall be deemed to be an encroacher and that he is not entitled to the benefit under Section 82 of the Act.

Even assuming that the petitioner is continuing in possession as on today, his status being a mere encroacher, it is always open to the respondents to recover possession under Section 84 of the Act by taking police assistance, if necessary. Hence, the mere fact that he is in possession as on today, will not disentitle the 3rd respondent-Temple to take steps for grant of fresh lease by conducting public auction. The writ petition is misconceived and the same is accordingly, dismissed. No costs.

However, this shall not preclude the petitioner to participate in the auction proposed to be conducted on 19.7.2007, if so advised. No costs.

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(G. ROHINI, J.)

18th July, 2007.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15031 OF 2007

18th July, 2007.

Between:

V. Suresh Babu. ..Petitioner.

And

The Regional Joint Commissioner,
Multi Zone-I, Endowemnts Department,
Kakinada, District Godavari District
and others. .. Respondents.